

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Water

4 (Amendment)

5 401 KAR 5:070. Provisions of the KPDES permit.

6 RELATES TO: KRS 224.01-010, 224.01-070, 224.01-400, 224.70-100, 224.70-120, 224.99-
7 010, 40 C.F.R. 122, ~~[see-]~~ 403, 33 U.S.C. 1251-1387 ~~[et seq-]~~

8 STATUTORY AUTHORITY: KRS 224.10-100, 224.16-050(1), (4), 224.70-110, 40 C.F.R.
9 122, ~~[see-]~~ 403, 33 U.S.C. 1251-1387 ~~[et seq-, 1342]~~

10 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.16-050(1) authorizes the cabinet
11 to ~~[provides that the Environmental and Public Protection Cabinet may]~~ issue federal permits
12 pursuant to 33 U.S.C. ~~[USC Section]~~ 1342(b) of the Federal Water Pollution Control Act, 33
13 U.S.C. 1251-1387 ~~[USC Section 1251 et seq.]~~ subject to the conditions established ~~[imposed]~~ in 33
14 U.S.C. ~~[USC Sections]~~ 1342(b) and (d). KRS 224.16-050(1) requires that any exemptions granted
15 in the issuance of these ~~[NPDES]~~ permits shall be pursuant to 33 U.S.C. ~~[USC Sections]~~ 1311,
16 1312, and 1326(a). ~~[Further,]~~ KRS 224.16-050(4) requires that the cabinet shall not impose under
17 any permit issued pursuant to this section any effluent limitation, monitoring requirement, or other
18 condition that ~~[which]~~ is more stringent than the effluent limitation, monitoring requirement, or
19 other condition that ~~[which]~~ would have been applicable under the federal regulation if the permit
20 were issued by the federal government. This administrative regulation contains the basis for
21 provisions, terms, and effect of a KPDES permit, including permit duration, schedule of

1 compliance, and basis for permit modification or revocation and reissuance.

2 Section 1. Duration of Permits. The duration of a KPDES permit shall be as established in 40
3 C.F.R. 122.46, effective July 1, 2009. ~~[(1) KPDES permits shall be effective for a fixed term not to~~
4 ~~exceed five (5) years. Except as provided in 401 KAR 5:060, Section 1(5)(c), the term of a permit~~
5 ~~shall not be extended by modification beyond this maximum duration. The cabinet may issue a~~
6 ~~permit for a duration that is less than the full five (5) year term.~~

7 ~~(2) A permit may be issued for the full term if the permit includes effluent limitations and a~~
8 ~~compliance schedule to meet the requirements of 401 KAR 5:080, Section 1(2) whether or not~~
9 ~~applicable federal effluent limitations guidelines have been promulgated or approved.]~~

10 Section 2. Schedules of Compliance. A schedule of compliance for a KPDES permit shall be as
11 established in 40 C.F.R. 122.47, effective July 1, 2009. ~~[(1) The permit may, if appropriate,~~
12 ~~specify a schedule of compliance leading to compliance with KRS Chapter 224 and administrative~~
13 ~~regulations promulgated pursuant thereto.~~

14 ~~(a) Time for compliance. Any schedules of compliance under this section shall require~~
15 ~~compliance as soon as possible. In addition, schedules of compliance shall require compliance not~~
16 ~~later than the applicable deadline specified in 401 KAR 5:080.~~

17 ~~(b) The first KPDES permit issued to a new source or a new discharger shall contain a schedule~~
18 ~~of compliance only if necessary to allow a reasonable opportunity to attain compliance with~~
19 ~~requirements issued or revised after commencement of construction but less than three (3) years~~
20 ~~before commencement of the relevant discharge. For recommencing dischargers, a schedule of~~
21 ~~compliance shall be available only if necessary to allow a reasonable opportunity to attain~~
22 ~~compliance with requirements issued or revised less than three (3) years before recommencement~~
23 ~~of discharge.~~

~~(c) Interim dates. Except as provided in subsection (2)(a)2 of this section, if a permit establishes a schedule of compliance which exceeds one (1) year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.~~

~~1. The time between interim dates shall not exceed one (1) year.~~

~~2. If the time necessary for completion of any interim requirement, such as the construction of a control facility, is more than one (1) year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.~~

~~(d) Reporting. The permit shall be written to require that no later than fourteen (14) days following each interim date and the final date of compliance, the permittee shall notify the cabinet in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports.~~

~~(2) Alternative schedules of compliance. A KPDES permit applicant or permittee may cease conducting regulated activities, by termination of direct discharge for KPDES sources, rather than continue to operate and meet permit requirements as follows:~~

~~(a) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:~~

~~1. The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or~~

~~2. The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.~~

~~(b) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to~~

1 ~~termination which shall ensure timely compliance no later than the statutory deadline.~~

2 ~~(c) If the permittee is undecided whether to cease conducting regulated activities, the cabinet~~
3 ~~shall issue or modify a permit to contain two (2) schedules as follows:~~

4 ~~1. Both schedules shall contain an identical interim deadline requiring a final decision on~~
5 ~~whether to cease conducting regulated activities no later than a date which ensures sufficient time~~
6 ~~to comply with applicable requirements in a timely manner if the decision is to continue~~
7 ~~conducting regulated activities;~~

8 ~~2. One (1) schedule shall lead to timely compliance no later than the deadline contained in 401~~
9 ~~KAR 5:080;~~

10 ~~3. The second schedule shall lead to cessation of regulated activities by a date which shall~~
11 ~~ensure timely compliance no later than the deadline specified in 401 KAR 5:080; and~~

12 ~~4. Each permit containing two (2) schedules shall include a requirement that after the permittee~~
13 ~~has made a final decision under subparagraph 1 of this paragraph it shall follow the schedule~~
14 ~~leading to compliance if the decision is to continue conducting regulated activities, and follow the~~
15 ~~schedule leading to termination if the decision is to cease conducting regulated activities.~~

16 ~~(d) The applicant's or permittee's decision to cease conducting regulated activities shall be~~
17 ~~evidenced by a firm public commitment satisfactory to the cabinet, such as a resolution of the~~
18 ~~board of directors of a corporation.]~~

19 Section 3. Requirements for Recording and Reporting of Monitoring Results. The requirements
20 for recording and reporting of a monitoring result shall be as established in 40 C.F.R. 122.48,
21 effective July 1, 2009. [All permits shall specify:

22 ~~(1) Requirements concerning the proper use, maintenance, and installation, if appropriate, of~~
23 ~~monitoring equipment or methods, including biological monitoring methods if appropriate;~~

1 ~~(2) Required monitoring including type, intervals, and frequency sufficient to yield data which~~
2 ~~are representative of the monitored activity including, if appropriate, continuous monitoring; and~~

3 ~~(3) Applicable reporting requirements based upon the impact of the regulated activity and as~~
4 ~~specified in 401 KAR 5:065, Sections 1 and 2. Reporting shall not be less frequent than specified~~
5 ~~in Section 2 of this administrative regulation.]~~

6 Section 4. Effect of a Permit. (1) Except for a [any] toxic effluent standard or prohibition
7 established ~~[standards and prohibitions included]~~ in 401 KAR 5:065, Section 2 ~~[4(1)(b)]~~,
8 compliance with a KPDES permit during its term shall constitute compliance, for purposes of
9 enforcement, with the KPDES program.

10 (2) A permit may be modified, revoked and reissued, or revoked during its term for cause as
11 established ~~[set forth]~~ in Sections 6 and 7 of this administrative regulation.

12 (3) ~~(2)~~ The issuance of a permit shall not convey ~~[any]~~ property rights ~~[of any sort,]~~ or ~~[any]~~
13 exclusive privilege.

14 (4) ~~(3)~~ The issuance of a permit shall not authorize ~~[any]~~ injury to persons or property, ~~[or]~~
15 invasion of other private rights, or ~~[any]~~ infringement of state or local law or administrative
16 regulations.

17 Section 5. Transfer of Permits. Transfer of a KPDES permit shall be as established in 40 C.F.R.
18 122.61, effective July 1, 2009. ~~[(1) Transfers by modification. Except as provided in subsection~~
19 ~~(2) of this section, a permit may be transferred by the permittee to a new owner or operator only if~~
20 ~~the permit has been modified or revoked and reissued, under Section 6 of this administrative~~
21 ~~regulation, or if a minor modification has been made to identify the new permittee and incorporate~~
22 ~~other requirements as may be necessary under the KPDES administrative regulations.~~

23 ~~(2) Automatic transfers. As an alternative to transfers under subsection (1) of this section, any~~

1 ~~KPDES permit may be automatically transferred to a new permittee if:~~

2 ~~(a) The current permittee notifies the cabinet at least thirty (30) days in advance of the~~
3 ~~proposed transfer date in paragraph (b) of this subsection;~~

4 ~~(b) The notice includes a written agreement between the existing and new permittees~~
5 ~~containing a specific date for transfer of permit responsibility, coverage, and liability between~~
6 ~~them; and~~

7 ~~(c) The cabinet does not notify the existing permittee and the proposed new permittee of an~~
8 ~~intent to modify or revoke and reissue the permit. A modification under this paragraph may also be~~
9 ~~a minor modification under Section 6(3) of this administrative regulation. If this notice is not~~
10 ~~received, the transfer shall be effective on the date specified in the agreement mentioned in~~
11 ~~paragraph (b) of this subsection.]~~

12 Section 6. Modification or Revocation and Reissuance of Permit.

13 (1) The modification or revocation and reissuance of a KPDES permit shall be as established
14 in 40 C.F.R. 122.62, effective July 1, 2009.

15 (2) A minor modification of a KPDES permit shall be as established in 40 C.F.R. 122.63,
16 effective July 1, 2009. ~~[If the cabinet receives any information, the cabinet may determine whether~~
17 ~~or not one (1) or more of the causes, listed in subsections (1) and (2) of this section for~~
18 ~~modification or revocation and reissuance or both, exist. If cause exists, the cabinet may modify or~~
19 ~~revoke and reissue the permit accordingly, and may request an updated application if necessary. If~~
20 ~~a permit is modified, only the conditions subject to modification shall be reopened. If a permit is~~
21 ~~revoked and reissued, the entire permit shall be reopened and subject to revision and the permit~~
22 ~~shall be reissued for a new term. If cause does not exist under this section, the cabinet shall not~~
23 ~~modify or revoke and reissue the permit. If a permit modification satisfies the criteria in subsection~~

1 ~~(3) of this section for "minor modifications" the permit may be modified without a draft permit or~~
2 ~~public review. Otherwise, a draft permit shall be prepared and other procedures in 401 KAR 5:075~~
3 ~~shall be followed.~~

4 ~~(1) Causes for modification. The following shall be causes for modification but not revocation~~
5 ~~and reissuance of permits unless the permittee agrees to revocation and reissuance as well as~~
6 ~~modification of a permit.~~

7 ~~(a) Alterations. If there are material and substantial alterations or additions made to the~~
8 ~~permitted facility or activity which occurred after permit issuance, the alterations may justify the~~
9 ~~application of permit conditions that are different or absent in the existing permit.~~

10 ~~(b) Information. If the cabinet has received information, cause may exist for modification.~~
11 ~~KPDES permits may be modified during their terms for this cause only if the information was not~~
12 ~~available at the time of permit issuance, except for revised administrative regulations, guidance, or~~
13 ~~test methods which would have justified application of different conditions at the time of permit~~
14 ~~issuance. In addition, the applicant shall show that the information would have justified the~~
15 ~~application of different permit conditions at the time of issuance. For KPDES general permits this~~
16 ~~cause shall include any information indicating that cumulative effects on the environment are~~
17 ~~unacceptable.~~

18 ~~(c) New administrative regulations. If the standards or administrative regulations on which the~~
19 ~~permit was based have been changed by promulgation of amended standards or administrative~~
20 ~~regulations or by judicial decision after the permit was issued, then cause may exist for~~
21 ~~modification. The permit shall be modified only as follows:~~

22 ~~1. For promulgation of amended standards or administrative regulations, if:~~

23 ~~a. The permit condition requested to be modified was based on a promulgated effluent~~

1 ~~limitation guideline, EPA approved or promulgated water quality standards of 401 KAR 5:031, or~~
2 ~~the secondary treatment administrative regulations of 401 KAR 5:045;~~

3 ~~b. EPA has revised, withdrawn, or modified that portion of the federal regulation or effluent~~
4 ~~limitation guideline or has approved a cabinet action with regard to a water quality standard on~~
5 ~~which the permit condition was based; and~~

6 ~~c. A permittee requests modification in accordance with 401 KAR 5:075, Section 2, within~~
7 ~~ninety (90) days after the amendment, revision, or withdrawal is promulgated.~~

8 ~~2. For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA~~
9 ~~promulgated effluent limitation guidelines, if the remand and stay concern that portion of the~~
10 ~~guidelines on which the permit condition was based and a request is filed by the permittee in~~
11 ~~accordance with 401 KAR 5:075, Section 2, within ninety (90) days of judicial remand.~~

12 ~~(d) Compliance schedules. A permit may be modified if the cabinet determines good cause~~
13 ~~exists for modification of a compliance schedule, based on an act of God, strike, flood, materials~~
14 ~~shortage, or other events over which the permittee has little or no control and for which there is no~~
15 ~~reasonably available remedy. A KPDES compliance schedule shall not be modified to extend~~
16 ~~beyond an applicable statutory deadline in 401 KAR 5:080.~~

17 ~~(e) For a small municipal separate storm sewer system (MS4), to include an effluent~~
18 ~~limitation requiring implementation of minimum control measures as specified in 401 KAR~~
19 ~~5:060, Section 12(9)(b), if:~~

20 ~~1. The permit does not include these measures based upon the determination that another~~
21 ~~entity was responsible for implementation of the requirements; and~~

22 ~~2. The other entity fails to implement measures that satisfy the requirements.~~

23 ~~(f) In addition the cabinet may modify a permit:~~

1 ~~1. If the permittee has filed a request for any variance under 401 KAR 5:055, Section 7, or 401~~
2 ~~KAR 5:080, Section 3, and the cabinet processes the request under the applicable provisions.~~

3 ~~2. If required to incorporate applicable toxic effluent standard or prohibition under 401 KAR~~
4 ~~5:065, Section 2(2).~~

5 ~~3. If required by the "reopener" conditions in a permit, which are established in the permit~~
6 ~~under 401 KAR 5:065, Section 2(3), for toxic effluent limitations, or 401 KAR 5:065, Section 2~~
7 ~~(40 CFR Section 403.10(e), pretreatment program).~~

8 ~~4. Upon request of a permittee who qualifies for a change in effluent limitations based on~~
9 ~~pollutants in intake water under 401 KAR 5:065, Section 3(7).~~

10 ~~5. If a discharger is no longer eligible for net limitations, as provided in 401 KAR 5:065,~~
11 ~~Section 3(7).~~

12 ~~6. As necessary under EPA effluent limitations guidelines concerning compliance schedule for~~
13 ~~development of a pretreatment program.~~

14 ~~7. If the level of discharge of any pollutant which is not limited in the permit exceeds the level~~
15 ~~which can be achieved by the technology-based treatment requirements appropriate to the~~
16 ~~permittee under 401 KAR 5:080, Section 1(2)(c).~~

17 ~~8. If the permittee begins or expects to begin to use or manufacture as an intermediate or final~~
18 ~~product or by-product any toxic pollutant which was not reported in the permit application under~~
19 ~~401 KAR 5:060, Section 2.~~

20 ~~9. To establish a "notification level" as provided in 401 KAR 5:065, Section 2(6).~~

21 ~~10. To modify a schedule of compliance to reflect the time lost during the construction of an~~
22 ~~innovative or alternative facility, for a POTW which has received a grant under CWA Section~~
23 ~~202(a)(3), 33 USC Section 1282(a)(3) for 100 percent of the cost to modify or replace facilities~~

constructed with a grant for innovative or alternative wastewater technology under CWA Section 202(a)(2), 33 USC Section 1282(a)(2). Without exception, the compliance schedule shall not be modified to extend beyond an applicable statutory deadline for compliance indicated in 401 KAR 5:080.

11. Upon failure of the cabinet to notify an affected state whose waters may be affected by a discharge from Kentucky.

12. If the permit becomes final and effective on or after August 19, 1981, if the permittee shows a good cause for the modification, to conform to changes respecting the following administrative regulation: 401 KAR 5:065, Section 1(3) and (4).

13. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.

14. If the discharger has installed the treatment technology considered by the cabinet in setting effluent limitations imposed under 401 KAR 5:080, Section 1 and CWA Section 402(a)(1), 33 USC Section 1342(a)(1) and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. If this occurs, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline).

15. If the permit becomes final and effective on or after March 9, 1982, and the permittee applies for the modification no later than January 24, 1985, if the permittee shows good cause in its request and that it qualifies for the modification, to conform to changes respecting the following administrative regulations: 401 KAR 5:055, Section 6(2) and 401 KAR 5:065, Section 3(2) and (3).

(2) Causes for modification or revocation and reissuance. The following shall be causes to

1 ~~modify or, alternatively revoke and reissue a permit:~~

2 ~~(a) Cause exists for revocation under Section 7 of this administrative regulation and the cabinet~~
3 ~~determines that modification or revocation and reissuance is appropriate.~~

4 ~~(b) The cabinet has received notification of a proposed transfer of the permit. A permit also~~
5 ~~may be modified to reflect a transfer after the effective date of an automatic transfer but shall not~~
6 ~~be revoked and reissued after the effective date of the transfer except upon the request of the new~~
7 ~~permittee.~~

8 ~~(3) Minor modifications of permits. Upon the consent of the permittee, the cabinet shall modify~~
9 ~~a permit to make the corrections or allowances for changes in the permitted activity listed in this~~
10 ~~section, without following the procedures of 401 KAR 5:075. Any permit modification not~~
11 ~~processed as a minor modification under this section shall be made for cause and with a 401 KAR~~
12 ~~5:075 draft permit and public notice as required under this section. Minor modifications shall only:~~

13 ~~(a) Correct typographical errors;~~

14 ~~(b) Require more frequent monitoring or reporting by the permittee;~~

15 ~~(c) Change an interim compliance date in a schedule of compliance, if the new date is not more~~
16 ~~than 120 days after the date specified in the existing permit and does not interfere with attainment~~
17 ~~of the final compliance date requirements;~~

18 ~~(d) Allow for a change in ownership or operational control of a facility if the cabinet~~
19 ~~determines that no other change in the permit is necessary, if a written agreement containing a~~
20 ~~specific date for transfer of permit responsibility, coverage, and liability between the current and~~
21 ~~new permittees has been submitted to the cabinet;~~

22 ~~(e) Change the construction schedule for a discharger which is a new source;~~

23 ~~(f) Delete a point source outfall if the discharge from that outfall is terminated and does not~~

1 ~~result in discharge of pollutants from other outfalls except in accordance with permit limits; or~~

2 ~~(g) Incorporate conditions of a POTW pretreatment program that has been approved in~~
3 ~~accordance with the procedures in 401 KAR 5:057 or a modification thereto that has been~~
4 ~~approved in accordance with the procedures in 401 KAR 5:057 as enforceable conditions of the~~
5 ~~POTW's permits.]~~

6 Section 7. Revocation of Permit. The causes and procedure for revoking a KPDES permit shall
7 be as established in 40 C.F.R. 122.64, effective July 1, 2009.

8 Section 8. Substitutions, Exceptions, and Additions to Cited Federal Regulations.

9 (1) "Waters of the Commonwealth" shall be substituted for "Waters of the United States" in
10 the federal regulations cited in this administrative regulation.

11 (2) "Cabinet" shall be substituted for "Director" if the authority to administer the federal
12 regulations cited in this administrative regulation has been delegated to the cabinet.

13 (3) "KPDES" shall be substituted for "NPDES" if the cabinet has been delegated the authority
14 to implement federal regulations cited in this administrative regulation.

15 ~~[(1) The following shall be causes for revoking a permit during its term, or for denying a renewal~~
16 ~~application:~~

17 ~~(a) Noncompliance by the permittee with any condition of the permit;~~

18 ~~(b) The permittee's failure in the application or during the permit issuance process to disclose~~
19 ~~fully all relevant facts, or the permittee's misrepresentation of any relevant fact at any time; or~~

20 ~~(c) A determination that the permitted activity endangers human health or the environment and~~
21 ~~can only be regulated to acceptable levels by permit modification or revocation.~~

22 ~~(2) KPDES permits may be modified or revoked if there is a change in any condition that~~
23 ~~requires either a temporary or a permanent reduction or elimination of any discharge controlled by~~

1 ~~the permit for example, plant closure or termination of discharge by connection to a POTW.~~

2 ~~(3) The cabinet shall follow the applicable procedures in 401 KAR 5:075 in revoking any~~
3 ~~KPDES permit under this section, except that if the entire discharge is permanently terminated by~~
4 ~~elimination of the flow or by connection to a POTW, but not by land application or disposal into~~
5 ~~a well, the cabinet may revoke the permit by notice to the permittee. Revocation by notice shall~~
6 ~~be effective thirty (30) days after notice is sent, unless the permittee objects within that time. If~~
7 ~~the permittee objects during that period, the cabinet shall follow 401 KAR 5:075, Section 2,~~
8 ~~revocation procedures. Expedited permit revocation procedures shall not be available to~~
9 ~~permittees that are subject to pending enforcement actions including citizen suits brought under~~
10 ~~KRS Chapter 224 and the Clean Water Act, 33 USC 1365. If requesting expedited permit~~
11 ~~revocation procedures, a permittee shall certify that it is not subject to any pending enforcement~~
12 ~~actions including citizen suits brought under KRS Chapter 224.~~

13 ~~Section 8. Federal Regulation Adopted Without Change. The following federal regulation~~
14 ~~governs the subject matter of this administrative regulation and is hereby adopted without~~
15 ~~change. 40 CFR Section 403.10(e), "State Pretreatment Program in Lieu of POTW Program",~~
16 ~~revised as of July 1, 2001. The federal regulation is available for inspection and copying, subject~~
17 ~~to copyright laws, during normal business hours of 8 a.m. to 4:30 p.m., excluding state holidays,~~
18 ~~at the Division of Water, 14 Reilly Road, Frankfort, Kentucky. Copies are also available from~~
19 ~~the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.]~~

401 KAR 5:070 “Provisions of the KPDES permit” approved for promulgation:

Date

Leonard K. Peters, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2010 at 5:00 P.M. (Eastern Time) at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 16, 2010, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Abigail Powell, Regulations Coordinator
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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 5:070

Contact Person: Peter T. Goodmann, Assistant Director

(1) Provide a brief summary of:

- (a) What this administrative regulation does:** This administrative regulation contains the basis for provisions, terms, and effect of a KPDES permit, including permit duration, schedule of compliance, and basis for permit modification or revocation and reissuance.
- (b) The necessity of this administrative regulation:** KRS 224.16-050 (1) requires that any exemptions granted in the issuance of these permits shall be pursuant to 33 U.S.C. 1311, 1312, and 1326(a). Further, KRS 224.15-050(4) requires that the cabinet shall not impose under any permit issued pursuant to this administrative regulation an effluent limitation, monitoring requirement or other condition that is more stringent than the effluent limitation, monitoring requirement or other condition that would have been applicable under the federal regulation if the permit were issued by the federal government.
- (c) How this administrative regulation conforms to the content of the authorizing statutes:** KRS 224.16-050(1) provides that the cabinet may issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:** This administrative regulation establishes the basis for provisions of a KPDES permit.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

- (a) How the amendment will change this existing administrative regulation:** This amendment revises ambiguous terms in accordance with KRS 13A and provides federal citations and strikes the federal language reproduced in the body of the state administrative regulation. The amendment also corrects incorrect citations to other regulations in the chapter.
- (b) The necessity of the amendment to this administrative regulation:** This amendment will correct and update the regulation to make it consistent with the corresponding federal and state regulations.
- (c) How the amendment conforms to the content of the authorizing statutes:** This amendment conforms to KRS 224.16-150, which authorizes the cabinet to implement the Federal Water Pollution Control Act.
- (d) How the amendment will assist in the effective administration of the statutes:** The amendment will aid in carrying out the goals of KRS 224. The amendment removes discrepancies between current state and federal regulations. The cabinet also believes that citing federal regulations will allow future federal changes in regulatory requirements to be more easily adopted.

- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:** This amendment affects individuals, businesses, and organizations that are engaged in the regulated disposal of treated wastewater under the KPDES permitting program. This administrative regulation affects over 10,000 existing permitted entities including individuals, businesses, and governmental organizations.

After analysis of the current types of permits, the administrative regulation is expected to impact the following number of entities:

- a. Individuals: The number of permits issued to an individual under this regulation other than for a business or organization is insignificant.
- b. Businesses: 1600 per year, primarily through industrial permits, non-public entity sanitary wastewater permits, and stormwater coverage issuances.
- c. Organizations: 100 per year, primarily through individual sanitary permits issued to nonpublic organizations such as churches, summer camps, and private social or sporting clubs.
- d. State or Local Government: 30 per year, primarily through permits for Public-Owned Treatment Works (POTWs).

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

- (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:** Regulated entities will not have to take any additional action to comply with this administrative regulation. The amendments to this administrative regulation are simply a change in style and remove any potential inconsistency between the state and corresponding federal regulation.
- (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):** None of the entities identified in question (3) is expected to incur additional costs. This amendment implements requirements that are already in federal regulations.
- (c) As a result of compliance, what benefits will accrue to the entities identified in question (3):** The regulated community affected by this regulation will not be confused by inconsistencies between existing regulations and the updated federal regulations

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

- (a) Initially:** No additional cost is anticipated.
- (b) On a continuing basis:** No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Existing permit fees, general funds, and EPA funds. This amendment does not change any source of funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees or funding will be necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment does not directly or indirectly establish fees.

(9) TIERING: Is tiering applied? (Explain why or why not)

Permit requirements are tiered based upon the nature and size of the wastewater discharge.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation #: 401 KAR 5:070

Contact Person: Peter T. Goodman, Assistant Director

- 1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?**

Yes X No

- 2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?**

This regulation affects wastewater treatment systems that discharge to waters of the Commonwealth. This amendment affects all units of state or local government that have a KPDES discharge permit.

- 3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.**

KRS 224 and the Clean Water Act, 33 U.S.C. 1251-1387

- 4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.**

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment is not expected to impact revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? No additional cost is expected.

(d) How much will it cost to administer this program for subsequent years? No additional cost is expected.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation#: 401 KAR 5:070

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1. Federal statute or regulation constituting the federal mandate.

40 C.F.R. 122 and 33 U.S.C. 1387

2. State compliance standards.

KRS 224.10-100, 224.16-050

3. Minimum or uniform standards contained in the federal mandate.

The federal standard requires that primacy states meet or exceed the federal requirements for water pollution prevention developed under the Clean Water Act (33 U.S.C. 1251-1387).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate?

No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.